

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DONNA DESENA,

Plaintiff,

-against-

ADOPTION ORDER
21-CV-2090 (JS) (JMW)

TARGET CORPORATION;
HEMPSTEAD TURNPIKE LLC; and
DAVID MINKIN MANAGEMENT CO., INC.,

Defendants.

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APPEARANCES

For Plaintiff: Paul R. Pepper, Esq.
Morici & Morici, LLP
1399 Franklin Avenue, Suite 202
Garden City, New York 11530

For Defendant
Target Corp.: Ian E. Hannon, Esq.
Simmons Jannace DeLuca, LLP
43 Corporate Drive
Hauppauge, New York 11788

For Defendant
Hempstead Tpke.: David I. Robinson, Esq.
Law Office of Andrea G. Sawyers
3 Huntington Quadrangle, Suite 102s
Melville, New York 11747

For Defendant
D.M. Mgmt. Co.: No appearances.

SEYBERT, District Judge:

Plaintiff Donna Desena ("Plaintiff") commenced this personal injury action in state court. (See Verified Compl., ECF No. 1-1.) Based upon diversity jurisdiction, Defendant Target Corporation ("Defendant" or "Target") removed the action to this

Court. (See Notice of Removal, ECF No. 1.) Plaintiff moves to have the action remanded and seeks attorney's fees for bringing her motion. (See Remand Motion, ECF No. 5.) On March 15, 2022, this Court referred the Remand Motion to Magistrate Judge James M. Wicks for a report and recommendation. (See Mar. 15, 2022 Elec. Referral Order.)

Magistrate Judge Wicks issued his Report and Recommendation ("R&R") on March 16, 2022. (See ECF No. 16.) He recommends that the Remand Motion be denied because Target has met its burden of showing by clear and convincing evidence that the joinder of the remaining defendants, i.e., Hempstead Turnpike LLC and David Minkin Management Co., Inc. (hereafter, the "Other Defendants"), who are New York citizens like Plaintiff (see id. at 2), was fraudulent. (See id. at 7 (further clarifying "the Court finds no indication that the joinder by Plaintiff was any sort of legal legerdemain or outright fraud, but rather that there is no possibility that Plaintiff can state a cause of action against the two non-diverse Defendants [i.e., the Other Defendants,] in state court").) Because the Magistrate Judge concluded that removal was appropriate, he further recommended that Plaintiff's request for attorney's fees be denied. (See id. at 10 n.8.) Further, Magistrate Judge Wicks recommended "the Court dismiss the claims against the [Other D]efendants on the same grounds as the Court did in Raia," i.e., where a finding of fraudulent joinder bears an

implicit finding that the plaintiff has failed to state a cause of action against the fraudulently joined defendant -- a non-diverse, out-of-possession landlord -- the sua sponte dismissal of claims against that defendant was warranted. (Id. at 10 (citing Raia v. W&S Assocs., L.P., No. 13-CV-2164, slip op. at 7, ECF No. 17 (E.D.N.Y. July 31, 2013)).)

The R&R also properly advised the parties that they have fourteen days to file objections to the R&R and that “[f]ailure to file objections within fourteen (14) days will preclude further review of th[e R&R]” All appearing parties received the R&R via the Court’s Electronic Case Filing system on March 16, 2022. (See Notice of Electronic Filing associated with R&R; see also R&R at 10.)

The time to object has expired and no objections to the R&R have been filed. Upon careful review and consideration, the Court finds magistrate Judge Wicks’s R&R to be comprehensive, well-reasoned, and free of clear error.

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Accordingly, **IT IS HEREBY ORDERED** that the Court ADOPTS the R&R (ECF No. 16) in its entirety, with:

- (1) Plaintiff's Remand Motion (ECF No. 5) being **DENIED**;
and
- (2) the claims against the Other Defendants, i.e., Hempstead Turnpike LLC and David Minkin Management Co., Inc., being **DISMISSED** sua sponte.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: March 31, 2022
Central Islip, New York